

## **432.0000 PRINTED SALES MESSAGES—Regulation 1541.5**

**432.0001 Advertising Brochures.** A publishing company markets its products by mailing advertising brochures to nurses and other health professionals. The company has an in-house printing and mailing division at the same location as the publishing division. The company prints some of its advertising brochures and then mails the brochures from its mailing house division to persons who become the owners of the brochures at no cost. In addition, some brochures printed by printers other than this company are delivered to and distributed by this company's in-house mailing division.

There has not been a sale of brochures in the transaction where the company prints and mails the brochures from its own in-house printing and mailing divisions since such a transaction between related entities does not constitute a sale. Since there has not been a sale of brochures, the exemption for printed sales messages is not available for this company. Further, the printed sales message exemption is not available where an outside printer (seller) sends the brochures to the in-house mailing division which is part of the purchasing company and not the company's agent. Since the brochures are delivered to the purchaser, the printed sales message exemption is not available to the seller. 4/21/88.

**432.0002 Advertising Campaigns.** Taxpayer is in the business of producing and selling advertising campaigns designed specifically for the tenants of a shopping center. If the taxpayer's proposal is accepted by the shopping center's marketing director, the taxpayer produces the agreed upon campaign. Each merchant in the mall is contacted by the taxpayer to determine the size and content of the merchant's advertisement in the catalog. The taxpayer subcontracts all the production elements, including the printing. Of the catalogs printed, 98% are shipped by the printer directly to the merchants' potential customers via U.S. Mail or common carrier. The other 2% are shipped to the mall.

The printer's sale of the catalogs to the taxpayer is a sale for resale, and the taxpayer should issue a resale certificate to the printer. The taxpayer's sale to the mall is a retail sale of the catalogs and other advertising materials which may be included in the campaign. The gross receipts from this sale are the total amounts paid by the merchant/advertisers plus the amount paid by the mall.

Since the catalogs sold to the mall were printed to the special order of the customer, those which were shipped by U.S. Mail or common carrier, by the printer to a person other than the mall, at no charge to the recipient, are exempt from tax pursuant to Regulation 1541.5, "Printed Sales Messages." The mall should supply the taxpayer with an exemption certificate as specified in that Regulation. Those catalogs shipped to the mall are subject to sales tax. 10/31/90.

**432.0002.150 Advertising Circulars.** A taxpayer is in the business of providing advertising circulars to supermarkets. The merchants call or mail in the advertising copy and the taxpayer produces the circular in its entirety. It also performs the affixing of mailing labels and delivery to the store and/or the United States Post Office. Given this information, tax applies as follows:

(1) Circulars that are delivered directly to and mailed by the United States Post Office: If the taxpayer delivers the circulars directly to the U.S. Post Office to mail the circulars to the customers of the merchants, the exemption for printed sales messages would apply. However, if the taxpayer delivers the circulars to the Post Office for mailing to the merchants, the exemption would not apply because the delivery would not be "to any other person at no cost to that person who becomes the owner thereof."

(2) If the taxpayer delivers the circulars to the customer (merchant) who, in turn, delivers the circulars to the U.S. Post Office, the exemption would not apply.

(3) Circulars that are handed out by a distributor on a door to door basis: The sale qualifies for the exemption if the taxpayer delivers the circulars to a distributor who qualifies as a common carrier for distribution to the prospective customers of the merchants.

(4) Circulars that are inserted in a newspaper: Since advertising circulars are considered as component parts of a newspaper when attached to or inserted in, and distributed with the newspaper, the exemption

provided under section 6362 applies. Accordingly, the sales of circulars that are for insertion in a newspaper are exempt whether or not the circular is delivered to the merchant. 2/27/87. (Am. 2001–3).

(See Regulation 1590 for application of tax to circulars inserted in newspapers for periods after 7/15/91.)

**432.0003 Advertising Layouts.** Advertising layouts are not regarded as printed sales messages and sales of such layouts do not qualify for exemption. 2/18/94.

**432.0005 Annual Reports and Newsletters as Printed Sales Message.** An organization publishes an annual report once a year and a newsletter twice a year. The publications serve both as a public record of the work of the organization and also as “sales” pieces to encourage prospective donors and grantees to take advantage of the services provided by the organization. The mailing lists for the publications consist of (1) current donors, (2) donor prospects, (3) foundation friends, e.g. past trustees and staff, (4) professional advisors, such as attorneys, etc., (5) current and prospective grantees, and (6) the general public.

The term “printed sales messages” does not include fund-raising materials; therefore, these publications do not qualify for the exemption. Since the annual report and the newsletters are not “regularly issued at regular intervals not exceeding three months,” the sale to the organization of the annual report and the newsletters do not qualify for the exemptions for sales of newspapers or periodicals. 1/7/93.

**432.0008 Apartment Owners Review Publication.** Apartment Owners Review is described as being produced for a specific client. It consists exclusively of advertisements and may include an article which publicizes services provided by the client. The publication is delivered directly to the U.S. Post Office by a mailing service for redelivery to the recipients unsolicited and free of charge.

This publication does not qualify as a “periodical” under Regulation 1590(a)(2), it qualifies as a printed sales message for purposes of Regulation 1541.5. 12/20/91.

**432.0010 Art Incorporated into Printed Sales Message.** Where an agency contracts to sell camera-ready art as well as a sale of a printed sales message, tax applies to the total gross receipts of the sale of camera-ready art including charges for consultation and research and charges for supervision related solely to the production of camera-ready art.

If the contract is solely for printed sales messages which qualify for the exemption under Regulation 1541.5, none of the charges for consultation, research or supervision are subject to tax. 10/14/93.

**432.0012.300 Bill Inserts.** A printer prints loose leaflets (bill inserts) for a utility company which are sent with the monthly bills. The printer believes that the monthly bill inserts qualify either as a periodical or printed sales messages. The printer states that the bill inserts appear at stated intervals (monthly), contain news or information of general interest to the public, or to some particular organization or group of persons (utility company’s subscribers), and each monthly issue bears a relationship to a prior or subsequent issue in respect to continuity of literary character or similarity of subject matter and there is some connection between the different issues of the series. In addition, the items are printed to the specific order of the customer, the items are mailed by the U.S. Postal Service, and the items are received by the subscribers at no cost to them. The printer also claims that it makes no difference whether there is an independent mailer of the item.

The bill inserts do not meet the definition of a periodical because they constitute handbills. The items are in the nature of notices and/or advertised services or pertaining to PUC regulations, etc. They are small, one-page items and are not printed at stated intervals, although they generally have a printing date on the back. Even if the bill inserts were not considered handbills, they are publications in which the advertising exceeds 90% of the printed area of the entire issue. Additionally, the PUC-required notices do not qualify because each notice is independent, and not one of a series of issues of the same publication.

The bill inserts do not meet the requirement of the printed sales messages because they were delivered by a nonqualifying method. The bill inserts were delivered to the purchaser, the utility company, not to the final

destination or to a mailing house. The PUC-required notices are not printed sales messages because they are not printed for the principal purpose of advertising goods or services. 2/4/93.

[432.0012.500](#) **Book Covers.** Book covers which contain advertising for businesses and which are provided to schools free of charge do not qualify as printed sales messages. Book covers are not a form listed in section 6379.5 (i.e., catalogs, letters, circulars, brochures, and pamphlets) and, thus, do not qualify as printed sales messages, even though they meet the other requirements of section 6379.5. 7/8/96.

[432.0012.875](#) **Brochure—50% Advertising.** A brochure consists of 48 pages (which include a four-page golf score card). Of those 48 pages, 24 consist of advertising and the remaining 24 pages are informational. Since the brochure does not consist of over 50 percent advertising, the brochure is not for the principal purpose of advertising and, therefore, it does not qualify as a printed sales message within the meaning of Regulation 1541.5(a)(1). Thus, the exemption provided by section 6379.5 does not apply. 11/2/93.

432.0013 **Brochure Seeking Donations.** A brochure seeking contributions from the person receiving it does not qualify as a printed sales message, and tax is applicable to the sale to the purchaser. 6/6/91.

[432.0015](#) **Brochures Which Include Over 90 Percent Advertising.** An advertising brochure containing entries from many advertisers, published every month in the same format, is not an exempt periodical because over 90% of the printed area contains advertising material. The brochure does, however, meet the criteria for exemption for printed sales message when the brochures are picked up by a distribution house or common carrier and distributed to others, including some of the advertisers, at no charge.

Although the advertisers pay the publisher for the right to be included in the brochure, none of the amount can be considered to be payment for the brochures because the advertisers pay the same fee regardless of whether they choose to receive copies of the brochure, or choose not to receive copies of the brochures. 12/20/90.

[432.0017](#) **Bulk Rate Permit.** The printed sales message exemption does not require the seller to maintain or use its own bulk rate permit when mailing printed sales messages through the U.S. Postal Service on behalf of a client. A seller may qualify for the printed sales message exemption when using its client's bulk rate permit provided the sale satisfies the requirements of the exemption. 3/2/95.

432.0018 **Calendars.** Calendars are specifically excluded from the definition of "printed sales message" by Regulation 1541.5(a)(1). The words "unless they meet the principal purpose of advertising or promoting goods and services" modifies only the word "directories" and not the words preceding it. This conclusion is supported by the Board's Notice to Interested Parties dated 8/10/87, that specifies the limitation of the amendment to Regulation 1541.5. 3/29/90.

[432.0019](#) **California State University Publication.** A California state university publishes a publication every other Monday except during academic recesses. The publication contains a list of students who are scholarship recipients which comprises 75 percent of the written portion of the publication. The rest of the written portion consists of a calendar of upcoming events including student orientation events and children's sports camps.

Since the publication consists primarily of the list and calendar mentioned above, it is not printed for the principal purpose of advertising or promoting goods or services. Therefore, it is not a printed sales message and the printer's sale to the university is not exempt under section 6379.5.

However, since the publication is issued at least four times per year but not more than 60 times per year and contains information of general interest to the students of the university, it may qualify as a periodical. 9/29/94

432.0020 **Campaign Literature.** A company is in the business of handling political campaigns for candidates and issues in California election contests. A contract is signed indicating that the company is an agent in the purchase of brochures and other materials. The company provides consulting and planning

services in setting up the campaign and deals with the printer in the procurement of brochures and mailing pieces. The company prepares preliminary art, some final mechanical art, and some computer design which is used in the production of brochures. When brochures are finished the company bills the candidate for the brochures separately than for other consulting services, but does not usually specify on the invoice the exact printer's charge nor does it routinely show the markup separately.

The company claims that the true object of the contract is the performance of consultant services, that the value of simple artwork done by the in-house artist is minimal, and that elaborate productions are handled by outside suppliers of art and mechanicals who charge sales tax. The company also provides creative concept copyrighting and graphic design with in-house staff for other direct-mail product only accounts and understands that there are "printed sales messages" which are exempt from tax.

Apparently the company, by signing a contract "indicating that the company is an agent", wishes to avail itself of the procedure provided in Regulation 1540(a)(2)(A) to act as agent for the client. Since the company both marks up the cost of the brochures and does not separately invoice the reimbursement for purchasing the property, it does not acquire the brochures as an agent on behalf of the candidate. The company makes a taxable sale of the brochure and artwork to the client.

The true object of the contract is not the performance of consulting services. The artwork or brochures are custom made properties and have value as items of tangible personal property, the sale of which is subject to sales tax. The sales of the brochures are not exempt sales of printed sales messages. "Campaign literature and other fund-raising materials" are specifically excluded from the term "printed sales messages." 4/15/92.

**432.0021 Cash Register Tapes.** A printer's client markets advertising space for local business on cash register tapes used in various stores. The client supplies the cash register tape, at no cost, to the stores. The client purchases the property tax-paid, designs the advertisements to the customer's specifications, and distributes the cash register tapes to the various stores.

Regulation 1541.5 provides that "printed sales messages" do not include "cash register tapes". The phrase "unless they meet the principal purpose of advertising or promoting goods or services" in Regulation 1541.5(a)(1) relates only to directories. At the request of publishers of certain directories, the Board added to Regulation 1541.5 the words: "or directories unless they meet the principal purpose of advertising or promoting goods or services" to allow certain directories (e.g. "Yellow Pages") to qualify as printed sales messages when the principal purpose of the publication of the directories was to advertise or promote goods or services. 3/18/92.

**432.0022 Catalogs.** A wholesale and resale distributor of tangible personal property with offices in California has enough catalogs for several mailings printed to its special order by a non-California printer. The catalog describes products and prices and is regularly sent to customers throughout the country, without charge. A mailing house usually ships the catalogs by common carrier or postal service.

The catalogs are delivered in three different ways:

- (1) Catalogs are delivered by the printer to the mailing house for distribution and shipping in the next mailing to the company's customers.
- (2) Catalogs are delivered by the printer to the company for distribution directly to customers.
- (3) Catalogs, which will be held until a future "regular interval" mailing time comes, are shipped to the company's warehouse where they remain on the pallets until the mailing house sends a truck to pick them up for the next mailing.

To be eligible for the exemption for sales of "printed sales messages", the delivery of the property must be to "any other person" without first being delivered to the purchaser. Thus, sales of catalogs delivered in

example 1 are exempt from tax, but sales of catalogs delivered in examples 2 and 3 are subject to tax. 8/19/93.

**432.0023 City Convention Center Guide—Printed Sales Message.** The publisher of City Convention Center Guide contracts with an outside printer to print the Guide. The Guide is shipped by common carrier to a van lines warehouse who ships the guides to the Convention Center. A delivery service distributes the Guide to the event participants, and also will pick up the Guide at the van lines warehouse for redelivery to various motels and hotels.

After reviewing the contract, it was concluded that the transaction is not a sale by the publisher to the Convention Center, but rather that the publisher is the consumer of the Guide. The publisher publishes the Guide on its own behalf and does not appear to be responsible for providing any Guide to the Convention Center or to any other persons on behalf of the Convention Center. If the printer ships the Guide directly to the van lines and none of the Guide are delivered to the publisher, and the delivery service is a separate person from the publisher, the sale of the printing to the publisher qualifies for the exemption from sales tax pursuant to section 6379.5, Printed Sales Message. 2/7/92.

**432.0023.600 Common Carrier Selling Printed Sales Messages.** A common carrier delivers telephone directories usually once a year. It also inventories directories at satellite warehouses for delivery to new telephone customers. It proposes to insert printed sales messages which it sells to advertisers in the telephone books. Initially, it plans to print the messages it sells, but in the future it may contract out the printing.

The requirement for exemption in Regulation 1541.5(b) that a printed sales message be delivered by a common carrier is not met when the common carrier is either the purchaser or the seller of the printed sales message. The requirement may be met if a portion of the transportation is by another carrier or the postal service, either to the warehouse or to the customer or both (1541.5(b)(5)). In any event, the purchaser may not gain possession of the printed sales messages at any time. 4/27/94.

**432.0023.650 Contest Blanks and Customer Comment Forms.** Among the printed items which do not qualify as printed sales messages are entry blanks for contest drawings and forms requesting comments from customers. Envelopes in which printed sales messages will be enclosed are exempt when sold with the printed sales message for shipment or delivery. 5/24/89.

**432.0023.675 Contract Carriers and Sellers Facilities.** To qualify for exemption, the printed sales messages must be delivered by the seller to a common carrier or the U.S. Postal Service for delivery. The exemption does not apply if the seller delivers the printed sales messages via a contract carrier. The exemption also does not apply if the seller or the purchaser is a common carrier and makes delivery solely via its own facilities to the recipient. 8/4/94.

**432.0023.700 Coupon Books.** A firm designs and publishes a book of coupons. After receiving orders from clients to prepare a coupon, it prepares a rough layout of the coupon, obtains approval from clients, and then has a printer print pages containing coupons from several clients. The printer takes the finished coupon books to a carrier who takes the books to a mailing house for addressing. The mailing house then takes the coupon books to the U.S. Postal Service for delivery to households by zip code. The printer's sale is to the firm.

Since coupon books are printed for the principal purpose of advertising or promoting goods or services, they qualify as printed sales messages. If the households receive the coupon books free of charge, the requirements of section 6379.5 have been met and the printer's sales of the coupon books are exempt from sales tax. 9/20/94.

**432.0024 Customized Circulars.** Members of a hardware cooperative organization are provided with a rough layout of an advertising circular along with inserts that may be substituted for the items included in the layout. Members use the optional inserts to customize the circular, making such changes as they wish with respect to products featured, prices, additional pages, etc.

The printer is instructed to ship the circulars to the customer's store, a newspaper or a mailing house. Even though the circulars have been printed to the special order of the customer, and the contents meet requirements of the definition of "printed sales messages", those that are shipped to the customer's store are taxable, except for those subsequently forwarded to a newspaper publisher for inclusion and distribution with the newspaper. Those shipped by the printer directly to a newspaper are also not taxable. Conversely, circulars delivered to the customer's store and then forwarded to a mailing house for redelivery to any other person, who becomes the owner at no cost, are taxable. Those circulars delivered directly by the printer to a mailing house acting as agent of the customer are not taxable. 8/27/90.

**432.0028 Developmental Software as "Printed Sales Message."** A software company is in the business of selling software programs for resale. Before the company actually mass produces a software program, extensive product development is performed by sending early versions of the software to approximately 2,000 persons at no charge to the recipient. The recipients use the free software and notify the software company of any "bugs" found in the program.

The exemption for "printed sales messages" does not apply to the sale of the computer software. Tax applies to the sale to the software company of the disks, the disk duplicating services and the supporting manuals. 5/3/93. (Am. 2008-1).

**432.0029 Delivery Made by Printer.** If a printer delivers the printed sales messages to the purchaser, the sale is subject to sales tax even though the purchaser may immediately deliver the property to a mailing house. 12/20/91.

**432.0029.5 Delivery to Purchaser.** A printer delivers 10% of a printed sales message order to the customer. This is the percentage of the original mailing which it believes will be returned by the post office with corrected addresses.

Approximately 30-60 days later, the customer will redeliver this 10% to the mailing house for subsequent mailing to the corrected addresses. Ten percent of the order is subject to tax. In order for the exemption for printed sales message to apply the printed matter cannot be delivered to the customer. 8/1/88.

**432.0030 Directories.** A directory provides only informational listings of the name, address and specialty of medical providers. The listings do not advertise or promote the sale of goods or services. The directory does not qualify as a "printed sales message", section 6379.5. 5/26/93.

**432.0031 Directories.** A directory consisting of 432 pages of directory listings and 276 pages of advertising, is produced by the Associated Students and distributed by an outside carrier.

Since not more than 50 percent of the printed area is advertising or promoting goods or services, the directory does not qualify as a "printed sales message." Sales tax applies to the sale of the directory to the association in this state. 12/8/92.

**432.0032 Directories.** Although generally excluded from the definition of "printed sales messages", directories which meet the principal purpose of advertising or promoting goods and services are included. The printer of the pages of such directories delivers the pages to a bindery via a carrier for further processing. The bindery binds the directories and affixes the mailing labels. The directories are then either sent by the bindery to the post office for mailing to recipients who receive them at no cost or the purchaser picks them up. The printer's sales of directory pages are taxable if the purchaser picks up the bound directories from the bindery. The printer's sales of the directory pages are exempt if the directories are mailed or delivered by the bindery or its agent through the U.S. Postal Service or common carrier and received by the recipient at no cost.

The bindery is performing fabrication which constitutes a sale. That sale is taxable when the customer picks up the directories, and is exempt if the directories are mailed or delivered by the bindery or its agent through the U.S. Postal Service or common carrier and is received by the recipient at no cost. 4/26/90.



[432.0032.400](#) **Directory.** A directory consists of 208 pages listing names, addresses, and specialties of medical service providers who have contracted with a company. The contracted providers and health plan enrollees depend on the directory in making referrals within the network.

An exemption is provided for catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. The directory provides only informational listings that do not advertise or promote the sale of goods or services and does not qualify for the exemption as a “printed sales message.” 5/26/93.

432.0033 **Direct Mail Advertising.** A company sells direct mail advertising to automotive dealers in California and throughout the United States. The mailings of letters are custom printed for the purchaser and are received by the recipient at no cost to them. For out-of-town customers, the mailings are shipped to one of the customer’s employees for mailing at their local post office. The mailings are pre-addressed, stamped and sealed. The exemption provided for “printed sales messages” (section 6379.5) is not available when the mailing is delivered to the purchaser. Since delivery was made to the purchaser, tax applies to the charges made by the printer unless otherwise exempted.

The other relevant exemption is for sales in interstate commerce. The sales are exempt when the contract requires the packages of printed sales messages to be shipped, and they are in fact shipped to the out-of-state purchasers by the postal service. 10/3/90.

[432.0033.600](#) **Disk, Diskette, and Videotape.** Sales messages delivered free to consumers on disk, diskette, and videotape do not come within the printed sales message exemption. The definition of printed sales messages under section 6379.5 does not include such items as disks, diskettes and videotapes. Accordingly, the tax applies to the sale of these items for the purpose of delivering sales messages. 8/01/96.

[432.0034](#) **Distribution by a Separate Division.** The publishing division of a taxpayer purchases telephone directories from a printer and directs that the directories be delivered by common carrier to the distribution division of the taxpayer. The fact that delivery is by common carrier is not sufficient to make the sale exempt. For the sale to be exempt, the directories would have to be delivered to a separate entity which is engaged in business as a “mailing house.” Although that separate entity could be related, such as a subsidiary, it must be a person other than the purchaser, which includes all its divisions. 1/4/94.

432.0035 **Double Postcards.** A double postcard consists of a single sheet of heavy paper stock 8½ x 63. One half of the card contains a printed sales message on both sides of the card. The other half of the card contains a reply postcard with a printed sales message on the back of it that states in part “if you like your sample copy, honor our \$19.97 invoice to get 11 more issues—12 in all.”

Although the reply postcard portion is not a printed sales message, the described document is printed for the principal purpose of advertising or promoting the sales of goods and qualifies as a printed sales message. If the printed sales message is otherwise sold and delivered in accordance with Regulation 1541.5, the sale is exempt from tax. 5/15/92.

[432.0037](#) **Education Brochures.** A brochure which promotes a seminar by illustrating the educational offerings, speakers, itinerary, and a registration form and which is printed to the special order of the purchaser will qualify for the “printed sales messages” exemption provided it is mailed or delivered by the seller (printer), the seller’s agent, or mailing house at no cost to the recipients who become the owners. 6/13/88.

[432.0039](#) **Envelopes Used as Containers.** In order for the sale of envelopes used as containers for printed sales messages to be exempt from tax, the envelopes must be sold to the “persons” who place the printed sales messages in the envelopes and sell the printed sales messages together with the envelopes. Accordingly, sales of envelopes to a mailing house which will use the envelopes to mail “printed sales messages” are subject to tax since the mailing house is not the seller of the “printed sales message.” 1/27/88.

**432.0041 Exemption Certificate—Advertising Agencies.** An exemption certificate as specified by Regulation 1541.5(c) should not be issued by an advertising agency in its own name when purchasing printed sales messages from a printer. However, the advertising agency could issue the exemption certificate if it establishes that it is acting as an agent for its client in the particular purchase. Specifically, it must clearly disclose to the printer that it is acting as agent for its client. It must obtain, prior to the purchase, and retain written evidence of the agent status with its client. The price billed to its client must be the same as the amount charged by the printer exclusive of any agency fee.

The same rules apply to issuing an exemption certificate as those which apply to a resale certificate. That is, the advertising agency that purchases tangible personal property on behalf of its client may not issue an exemption certificate in its own name to the supplier. It will be presumed that an advertising agency who issues an exemption certificate to its suppliers is purchasing the property on its own behalf and is not acting as an agent for its client. (Regulation 1540(a)(2)(A).)

In addition, the printed sales messages must be delivered in accordance with the requirements in Regulation 1541.5(b)(2) and (3) for the sales to be exempt from the sales tax. 2/27/96.

**432.0042 Exemption Certificate Issued by Customer.** An exemption certificate, accepted in good faith, relieves the seller from liability from sales tax for sales of printed sales messages delivered in accordance with subdivisions (b)(2) and (b)(3) of Regulation 1541.5. However, if the seller fails to deliver the printed sales message in such a manner and delivers the printed material to the purchaser or the purchaser's agent, the seller would be subject to the sales tax because the seller did not comply with the delivery requirement stated in the exemption certificate. (Regulation 1541.5(c)(3).) 2/24/94.

**432.0042.750 Fabric Sample Books.** Sample books which contain cuts of fabric do not qualify as printed sales messages merely because they include some incidental printing. Any printing on such sample books is ancillary to the fabric, which is the primary marketing tool. That is, the sample books do not consist substantially of printed sales messages for goods and services, but rather consist substantially of samples. 5/4/95.

**432.0042.800 Financial Prospectuses.** Financial prospectuses meet the definition of printed sales messages and are exempt if they are shipped by the seller or a mailing house acting on behalf of the purchaser to persons who acquire them at no cost. It makes no difference if the third party recipient is an underwriter, broker/dealer or investor.

Any prospectuses which the mailing house retains for possible future distribution, are subject to tax. The mailing house is not acting as an agent for purposes of mailing the prospectus. Rather, it is storing the prospectus for an undetermined period of time on behalf of the purchaser.

Prospectuses mailed by the mailing house to field agents of the purchaser, also do not qualify for the printed sales message exemption since the representatives are agents or employees of the purchaser. 3/29/89.

**432.0043 Folders Used as Containers.** Folders preprinted with a company logo together with the name of a product which are used as containers to insert "printed sales messages," qualify as a part of the printed sales message.

However, if the folders are sold independently they do not so qualify. Under these circumstances, it is not "... a container ... sold with printed sales messages for shipment or delivery ..." pursuant to Regulation 1541.5(b)(7). 1/8/90.

**432.0044 Food Tray (Carrier) Used at Sporting Events, etc.** A firm produces (through an outside manufacturer) food carriers which consist of a cup carrier and an integrated food tray. The firm will contact a potential advertiser to offer advertising exposure on the food carrier. For instance, a company will purchase one season's advertising at a major baseball stadium. The finished food carrier with the



company's advertising on it are delivered to the stadium and given to the concessionaire free of charge. The concessionaire gives them to fans who purchase multiple food items. Once the season is completed, the firm removes the unused food trays from the stadium in favor of the advertiser for the next season. Neither the advertiser nor the concessionaire has the right to use or dispose of the unused units without authorization of the firm.

If the firm is producing the carriers on its own behalf and is merely selling advertising space to a number of clients, the firm would be the consumer of, and tax would apply to the sale to the firm of the carriers. Tax would not apply to the firm's charge for the advertising space. However, in this case, when the firm produces carriers for only one specific advertiser and delivers the carriers to the advertiser or to another person, such as the concessionaire, on behalf of the advertiser, the firm's transaction is a retail sale of the carrier to the advertiser.

This transaction would not qualify for the printed sales message exemption since the exemption is limited by its terms to the sale of "catalogs, letters, circulars, brochures, and pamphlets." The food and drink carriers are not within the type of printed material listed; therefore, the firm's sales of the carrier would not qualify for the exemption. 7/11/96.

**432.0045 Franchise Fees.** A magazine franchiser contracts with a printer to print a publication consisting of advertising for homes for sale. The printer delivers the publications to a franchisee.

Since a franchisee of the customer receives the publication, there is an indirect charge made by way of a franchise fee. In such case, sales tax applies to the charge made by the printer because the materials are not received by "... any other person at no cost" as required by Regulation 1541.5. 11/26/91.

**432.0050 Game Cards.** Game cards used in a game sponsored by a soft drink company and a chain of pizza restaurants contain only small logos for each company in the respective upper corners of the cards and a fine print statement that one of the prizes is a soft drink. No other advertising appears on the game cards. The cards cannot be considered printed sales messages since they are not produced for the principal purpose of advertising or promoting goods and services. 4/6/94.

**432.0060 Health Plan Benefits Brochure.** A health maintenance organization's brochures which invite prospective members to join the organization and provide an explanation of benefits and a list of participating physicians to demonstrate the choices available to the prospective members are printed sales messages. 4/29/92; 12/18/97. (Am. M99-1).

**432.0061 Homes for Sale Publication.** An individual sells advertising, comprised of a narrative description of land or homes for sale (the description may be accompanied by a photograph) to realtors. The listings and photographs are consolidated into a publication. The rough layout is sent to a publishing company out of state for final layout and printing. The publication company sends the completed publications to an out-of-state airport where a delivery service picks up the publications and delivers them to various California businesses where the public may pick up a copy for free. The delivery service also delivers some copies to the individual.

The publication is printed to the special order of the customer, printed for the principal purpose of advertising or promoting goods or services, and a portion is delivered by common carrier to businesses where the consuming public becomes owner of the publication free of charge. Therefore, the copies which are distributed to the public are exempt from tax. As to the copies delivered to the individual, the printed sales message exemption does not apply because this transaction does not comply with the delivery requirements of the exemption statute. 6/6/88.

**432.0063 Independent Contractor as Separate Entity.** Taxpayer provides full printing service to a variety of customers. For various business reasons, the majority owners of the printing business form a general partnership trucking firm which will provide common and contract carrier services to taxpayer and others. The trucking entity is engaged to deliver printed sales messages for taxpayer. Deliveries are to certain specified individuals (i.e., homeowners) at no cost to such individuals.

Assuming that the independent contractor (trucking entity) would not qualify as an employee under common law principals as well as Internal Revenue Service Guidelines, the sale of such printed sales messages is exempt from sales tax. 11/21/91.

[432.0063.800](#) **Letters Soliciting Donations.** When the principal purpose of the letters and envelopes printed by the taxpayer is to solicit donations and not to advertise or promote goods or services, they do not qualify for the “printed sales messages” exemption under section 6379.5. 3/17/89.

[432.0063.840](#) **LifeHelp—Service Request Card.** Because the principal purpose of the LifeHelp circular is to advertise/promote the sale of kits, the circular qualifies as a printed sales message even though the bottom half is an order/request form.

The sale of the circular is exempt if it is printed to the special order of the purchaser and is delivered through the mail or common carrier to any other person at no cost to that person who becomes the owner of the circular. 9/7/93.

[432.0064](#) **Luggage Tags.** A California advertising specialties distributor works with a California advertising agency who has a Utah client who has no contract or “nexus” with California except its contract with the distributor and the agency. The agency ordered luggage tags from the distributor as an agent of its Utah client, who was the purchaser from the distributor. No resale certificate was provided. A portion of the tags were purchased from a California supplier and the remainder of the tags were purchased from out-of-state suppliers. All the tags were shipped to a California mailing house except for a small portion shipped by the California supplier to Utah. The luggage tags were shipped as gifts by the mailing house throughout the United States with less than 5% shipped to California addresses.

First, the luggage tags do not qualify for the printed sales message exemption. The definition of printed sales message is a narrow one, and does not include luggage tags.

The sale of the tags that were shipped by the California supplier directly to Utah pursuant to the contract of sale was an exempt sale of interstate commerce. The sale of the remaining tags that were shipped to the California mailing house are subject to tax since the tags were not shipped out of state by the suppliers pursuant to the contract of sale. Instead, these tags were shipped to the Utah purchaser’s agent, the California mailing house, for use by the Utah purchaser in California. 8/9/93.

[432.0064.400](#) **Magazine Inserts.** High quality four color advertisements are printed for insertion into a magazine to look like an integral part of the magazine. The advertisements are purchased by A and printed by a California printer. The printer delivers the advertisements by common carrier to trade and consumer magazines which are distributed nationwide.

Assuming the inserts are advertisements for the promotion of goods or services, their sales would qualify for the exemption for sales of printed sales messages if they meet all of the criteria set forth in Regulation 1541.5. The printed sales messages are received at “no cost” for purposes of the regulation when they are inserted into a periodical which does not consist entirely of advertising. If the publication only advertises products and a charge is made to the customer, the printed sales message is not provided at “no cost.” 1/5/94.

[432.0064.425](#) **Maps.** A printing company prints maps of specific communities to the special order of a real estate company. The maps are given by the real estate company to potential purchasers of homes in order to help the potential purchasers locate homes for sale in the communities. The maps also contain written information about the communities and advertisements for over seventy businesses. The main portion of the map product is devoted to actual maps and written information about the communities. Only a small portion of the map product contains advertisements. Since the map product does not consist of over 50% advertising, it is not for the principal purpose of advertising or promoting the sale of goods and services and, therefore, does not qualify as a printed sales message. 9/24/97. (M98–3).

[432.0064.450](#) **Medical Provider Directories.** Medical provider directories that list the names of physicians and provide certain information about the physicians, such as office addresses and areas of practice, are not considered as advertising or promoting the sale of goods or services. Therefore, the directories do not qualify as “printed sales messages” and their sales are not exempt from tax under section 6379.5 without regard to whether they are mailed to potential members or to existing members of the HMO. 7/11/95.

432.0064.500 **Mutual Fund Prospectus.** A mutual fund prospectus is a printed sales message since it is printed for the primary purpose of promoting the sale of goods and services. The sale of the prospectus and the affixed application is exempt from sales tax if it is delivered to a mailing house without the purchaser obtaining possession and is mailed through the United States Postal Service to people who become the owner at no cost to them. 7/31/96.

[432.0064.515](#) **Mutual Fund’s Promotional Material.** The materials listed below are printed by a California printer and delivered directly by the printer to a fulfillment mail house located in California. These materials are printed to the special order of the customer, the mutual fund. These items are then mailed by the fulfillment house through the United States Postal Service to the customer’s clients and potential clients. There is no cost to clients or potential clients for the receipt of these materials. Thus, the sale of any such items qualifying as printed sales messages are exempt from tax:

(1) A postcard-type of self mailer which describes company’s growth fund. This postage-paid card contains information on both sides promoting the sale of the growth fund. Therefore, it is a printed sales message and its sale is exempt from tax.

(2) Outside envelope with the words “Fund Info” printed on it as well as the name of the fund and return address. If the “outside” envelope is used to package items qualifying as printed sales messages for mailing and it is sold with such items, its sale would satisfy the requirements for the exemption since it would be sold with the printed sales messages for shipment or delivery of the printed sales message. On the other hand, if it is purchased from one source while the printed sales message(s) is purchased from another, its sale would be subject to tax.

(3) A group of pamphlets which is comprised of an annual report dated March 31, 1994, a quarterly report dated June 30, 1994, a semi-annual report dated September 30, 1994, and a quarterly report dated December 31, 1994. The same sequence is followed for the year 1995. Each of these pamphlets are descriptive of the activities regarding the company’s “growth fund.” This group of pamphlets consist of statements of financial conditions which provide a “track record” of performance of the growth fund and include disclaimers about future performance. These pamphlets are not “printed sales messages” since their principal purpose is not that of advertising or promoting sales of goods or services. Thus, their sale is taxable unless qualifying for another applicable exemption, such as the exemption for sales of certain periodicals.

These quarterly, semi-annual, and annual reports are reports of the financial activities of the “growth fund” during the period reported and are cumulative in nature providing information in regard to the fund over the span of a year. They contain news or information of general interest to a segment of the public. Although there is a change in the title of successive issues to relate to the period for which it is issued, each issue is one of a series, bears a relationship to each other issue, is similar in subject matter to the other issues, and is similar in style and formats to other issues. Hence, the reports qualify as periodicals. Since these periodicals are distributed without charge, the sale by the printer to the customer is exempt from the tax.

(4) A prospectus and a brochure for the company’s mutual funds. A prospectus is a “printed sales message” since such materials are printed for the primary purpose of promoting the sale of goods or services. Hence, the sale is exempt from tax.

(5) A reply envelope and an account application form. Generally tax applies to sales of reply envelopes and order or application forms unless they are sold as a component or integral part of the printed sales message. Hence, in order for the sale of the reply envelope or application to be exempt from sales tax, they must be stapled, glued, or otherwise affixed to the printed sales message and sold together with the printed sales message. 5/17/96.

[432.0064.875](#) **Neck Hangers.** Neck hangers are sold to purchasers who attach them to nonreturnable containers of property which is sold. They are, for example, placed on a champagne bottle describing the contents thereof or for other promotional purposes. The neck hangers in question fall into three categories:

(1) This neck hanger is a form which lists three charities, one of which a purchaser of a bottle of wine may choose. The winery will send a donation of two dollars to that charity.

(2) This is a neck hanger which is a pocket planner.

(3) This neck hanger consists of advertising printed matter.

These neck hangers do not describe the contents of the bottles nor do they instruct the application or use of the bottles' contents. Rather, each is either a charity designation form, a pocket planner, or an advertisement. Therefore, these neck hangers do not qualify as labels.

The category 3 neck hangers are brochures whose principal purposes is advertising or promoting the sale of the bottles upon which they are placed. Thus, they are printed sales messages but they do not qualify for exemption because the neck hanger is delivered to the purchaser, (the winery) who places them on the bottles before they are sold and delivered to the grocery stores. (Regulation 1541.5(b).) 07/02/96.

[432.0065](#) **Newsletter as Printed Sales Message.** A newsletter which promotes or advertises goods or services, may qualify as a printed sales message; however, if it contains news or information of general interest it may not be considered a printed sales message, but instead may be a periodical. 12/1/88.

[432.0067](#) **Owners of Printed Material.** A retailer of posters hires and pays independent contractors for distribution. These posters are normally placed on buildings without obtaining permission from the owners of the buildings. Once the posters are in place, neither the retailer nor the contractors has any further interest in them. The posters remain in place until the property owner or someone else removes them. Under the above conditions, the property owners acquired "dominion and control" over the posters and thus became the "owners" of the posters for purposes under Regulation 1541.5 (b)(3).

Accordingly, a sale of posters printed to the special order of the customer and delivered by common carrier to the independent contractor for the purposes of placing the posters on the property of others is an exempt sale of printed sales messages. 2/23/93.

[432.0068](#) **Parking Lot Delivery.** A seller delivers printed sales messages to the customer's parking lot where distributors pick up and distribute the publications. The customer explained that the reason the printed sales messages are delivered to the parking lot is that they must be delivered to third parties the day they are delivered to the customer.

Regardless of the reason for having the publication delivered to the parking lot, since the seller delivers the publications to the customer instead of the third party donees who receive them at no cost, the sale to the customer does not qualify for the exemption for printed sales message. 4/15/92.

[432.0069](#) **Posters.** Posters printed for distribution to video stores may qualify as printed sales messages when they consist of a single sheet of paper and are printed to the special order of the purchaser for the principal purpose of advertising or promoting video rentals. This type of poster would fall into the category of a "circular." If such posters are delivered in accordance with the requirements in Regulation 1541.5(b)(2) and (3), the sale of the posters will not be taxable. 7/16/90.

**432.0070 Preprinted Catalog Pages.** A California computer products company purchases preprinted catalog pages from an out-of-state retailer who ships the pages directly to an in-state printer. The in-state printer incorporates the preprinted pages into catalogs that are printed for the computer products company. The final product is distributed to the company's customers in accordance with Regulation 1541.5.

Since the out-of-state printer would only print the pages pursuant to a specific order from the customer, the pages are considered to be "printed to the special order" of the purchaser. Therefore, when the computer product company purchases the preprinted pages from the out-of-state printer and has them shipped to the in-state printer for incorporation into the catalog, the use of the preprinted pages by the purchaser is exempt from use tax. 5/6/92.

**432.0071 Price List.** A price list comprised only of a listing of items for sale and their prices serves only for informational purposes and is not promotional in nature. Therefore, it does not fall within the definition of a "printed sales message" under Regulation 1541.5. 5/22/89.

**432.0071.400 Principal Purpose—Contest.** A firm distributes a mailer which promotes/solicits a contest and contest prizes through the use of 900 telephone numbers. It also distributes discount coupons with the mailer. In order to determine whether the "principal purpose" of the mailer is for "advertising or promoting goods and services," the entire scope of the program must be analyzed. It is conceded that the offer of a 900 telephone number is a "service." The contest number is merely a gimmick to (1) sell its 900 number services and (2) distribute discount coupons so its client-retailer-marketer can promote its products and services. Thus, although the manner in which the 900 number is promoted is not immediately apparent, the mailer pushes the use of the 900 number as the preferred method of response. As such, its principal purpose is to advertise and promote services and the mailer thus qualifies as a printed sales message. 12/31/96.

**432.0071.500 Principal Purpose—Response Card.** A response card contains information on both sides. The response card is essentially a form which a prospective customer fills out to request further information. The printed sales message portion of the card comprises less than 50 percent of the card's area. The principal purpose of the response card is for the prospective customer to complete and return information to the advertiser. Thus, it is in the nature of an order form and sales tax applies to the sale of the response card. 9/26/95.

**432.0072 Printed Sales Messages.** A brochure for an upcoming video release which summarizes the video's contents, shows prices or price codes and has a "pop-up" cardboard insert of the video's character(s), can qualify as a printed sales message, provided it meets all the other requirements in Regulation 1541.5. 3/29/90.

**432.0072.001 Printed Sales Messages.** Cards printed to the order of an insurance company advertising a special program for holders of a certain bank credit card are delivered to the bank's card center to be included with the credit card statement. The cards are printed sales messages for specific services. The bank may be considered a mailing house acting as the agent of the purchaser (insurance company) if the contract between the purchaser and the bank is an arm's length transaction where true compensation is provided to the bank. If these conditions exist, the sale of the cards to the insurance company would be exempt under Regulation 1541.5. 5/9/91.

**432.0072.200 Printed Sales Messages/Printing Aid.** A company contracts separately with an advertising agency to do the mechanical through the color separation process and a printer to do the printing, with each company billing separately. Provided the transaction meets all the other requirements of a sale of a "printed sales message," the sale by the advertising agency would not qualify as a sale of printed sales messages. Only the printer's sale of the printed matter could qualify an exempt sale.

An agency purchases for resale photography, art, and other products or services that become a component part of the finished product. It passes title to the company prior to any use by the agency. The agency partially develops the product in one geographical area, ships it to another geographical area, both in California, for completion by another contractor working for the agency. The contractor, in turn, ships the

product to an out-of-state printer who prints the insert and ships it directly to a California newspaper for distribution. The customer is billed for the mechanical/color separation separately from the printing.

Under these facts, and assuming that the company is contracting only with the advertising agency for the purchase of printed matter, the application of tax to the advertising agency's charge for the photography, art, and other property it purchases for resale depends upon whether the advertising agency makes any use of the property in California prior to shipping it out of state. If the advertising agency produces, or has the subcontractor produce, a color separation in California, the photography and art do not become an ingredient or component part of the color separation. The image embodied in the photograph or art is only reproduced in the color separation and the photograph or art is used as an aid in producing the color separation. Since the advertising agency sells the photograph and art prior to such use, and the sale is in California, sales tax applies to the advertising agency's sale of the printing aids. This is true regardless that the sale of the color separation may be exempt from sales tax as a sale in interstate commerce or that the sale or use of the printed matter may qualify for exemption as a printed message or as a component part of a newspaper. 1/9/89.

**432.0072.700 Professional Magazines.** A taxpayer derives its revenues from sales of advertising space in various magazines which it publishes. These are professional magazines which cater to business students, engineering students, and practicing engineers. The magazines are distributed free of charge.

The magazines do not qualify as printed sales messages. The advertisements do not directly advertise or promote goods or services. These publications provide career information and allow the various advertisers (potential employers) to solicit applications from potential employees. The ads, without exception, do not identify goods or services, but only identify the company which placed the ad. 3/26/92.

**432.0073 Promotional Material.** An out-of-state printer/mailler asked for application of tax to the following transactions.

(1) Printer/mailler produces and mails in Pennsylvania direct mail promotional material for customer based on customer's mailing list at no cost to the recipients. Printer/mailler and customer both have nexus in California.

Title passes at the time promotional material is deposited in the mail in Pennsylvania. Accordingly, use of the property by the customer occurs outside of California, and the use tax does not apply.

(2) Printer produces catalog insert pieces in Pennsylvania for customer and drop ships them via common carrier to a bindery/mailling house in California contracted for by customer. The printer has nexus in California. The printed pieces will be incorporated into a catalog by the bindery/mailling house and will be mailed based on customer's mailing list at no cost to the ultimate recipients. Some pieces will be mailed to recipients within California; others will be mailed to recipients outside of California.

Customer is considered to be making use of the catalog insert pieces in California by sending the printed material to recipients. Use tax applies to such use of the property including the material shipped to recipients outside of California. It is immaterial whether or not the customer is engaged in business in California. However, if the catalog qualifies as a printed sales message and meets the requirements of Sales and Use Tax Regulation 1541.5(b)(1)(2)(3), the transaction would be exempt from sales and use tax.

(3) Printer/mailler produces in Pennsylvania direct mail promotional material for customer and ships material via common carrier to a post office in California for mailing to recipients both within California and out of California. Printer/mailler has nexus in California and customer may or may not have nexus in California.

Answer is the same as response to transaction 2 above. 11/21/91.

**432.0073.001 Promotional Material.** Printed materials which are printed to the specifications of a car company, consist of letters, a brochure, and posters. Of the three letters enclosed, one was to the dealers



introducing the company's new engine programs. One was a sample letter sent to the dealers which they can copy and send to their respective customers. This letter detailed the format of the new engine program by listing all the included components which comprise the replacement engines. The third letter introduces the car dealer parts manager to posters that can be displayed which advertise the company's automotive products. The brochure combines pictures and printed words announcing and detailing the company's new engine program. The posters consist of pictures of the company's automobile and accessories. One suggests the purchase of a car for Christmas while the other indicates that consumers can fulfill all their needs by shopping at the company's dealers. The printer also sells the car company envelopes and mailing tubes in which the letters, brochure, and posters are enclosed for mailing. The printer mails the envelopes and mailing tubes which enclose the letters, brochures, and posters to all the company's dealers.

The letters, brochures, and posters are printed sales messages. The principal purpose for each is to advertise or promote a good or service; they are mailed or delivered by the printer, the seller of the printed material; and they are received by persons at no cost. Additionally, the printer's sales of envelopes and mailing tubes are also exempt from tax since each are sold with the printed sales messages for shipment or delivery. 3/1/89.

**432.0074 Promotional Prizes.** Window displays, sun visors, clocks, calendars, and other novelty items containing printed promotional messages for home videos which are provided to wholesalers for distribution to retailers as they see fit, are not "printed sales messages". The exemption provided for in section 6379.5 is limited to "... catalogs, letters, circulars, brochures and pamphlets ...". 1/4/90.

**432.0075 Providing Flyers and Other Services.** A service organization plans to provide service to real estate agents. They requested information regarding the following services:

1. Initially "services" provided will be the creation and mailing of flyers. Other "services" such as rubber stamps, presentation folders, and copying are available.

The flyers, that were reviewed, are circulars which advertise services. The true object of the contract is the brochure which is created and distributed. The transactions are retail sales of tangible personal property. The flyers qualify as "printed sales messages" and the exemption from sales tax applies if the requirements of Regulation 1541.5(b) are met.

2. As the operations continue to grow, additional services will be provided such as: liaison between lender, escrow and agent; meeting with appraisers, termite inspectors and others; clerical support; and statistical studies.

Tax would not apply to the additional services provided that tangible personal property was not sold to the clients as part of these services (e.g. sale of standard statistical reports). 3/17/92.

**432.0076 Proxy Statements and Securities and Exchange Registration.** Proxy Statements and Securities and Exchange Statements will not qualify as printed sales messages, regardless of the manner in which they are mailed. Neither the proxy nor the registration statements are printed for the principal purpose of advertising or promoting goods or services. 7/27/88.

**432.0076.800 Publication Advertising Conventions and Seminars.** An association purchases from a printer brochures printed to the special order of the association. These brochures advertise or promote convention or seminars conducted by the association. The association never receives these brochures from the printer, but rather a mailing house distributes the brochures to persons who receive them free of charge and who become the owners thereof.

The sales of the brochures to the association are exempt as printed sales messages. The brochures are printed to the special order of the association for the principal purpose of advertising, they are distributed by a mailing house, and they are received at no cost by the person who becomes the owner of the brochures. 8/31/88.

**432.0077 Publication Advertising Properties for Sale.** A publication, which advertises properties for sale and is distributed to supermarkets and newsstands where it is free of charge to the general public, qualifies as a printed sales message. However, in order for the exemption to apply, the publication must be delivered in accordance with the requirements of Regulation 1541.5 (b)(1) to (b)(3). 11/27/89.

**432.0078 Publications Shipped to Purchaser's Premises.** Publications which qualify as "printed sales messages" are shipped to the parking lot of the purchaser. An independent contractor picks them up for delivery to other persons at no cost to that person.

Since the publications are sent to the premises of the purchasers, they are not sent directly to "any other person at no cost to that person who becomes the owner thereof". Tax applies to the sales of printed sales messages which are delivered to the purchaser. (Sales and Use Tax section 6379.5.) 11/21/91.

**432.0079 Publication Is Not a Printed Sales Message.** A publication containing advertising in addition to articles of general interest about types of industries, opportunities, and economic conditions in a targeted geographic area to lure economic development clients, new businesses, and executives to that area and is not a printed sales message. The publication is not advertising matter which is printed principally for the purpose of advertising particular goods or services. Retail sales of this publication are taxable. 4/27/90.

**432.0080 Qualified Common Carrier.** A person need not be a licensed common carrier in order to be a common carrier for purposes of Regulation 1541.5. A person must only be engaged in the business of transporting property for hire and offer his or her services indiscriminately to the public or to some portion of the public. 10/21/96.

**432.0082 Radio Station Newsletter.** A radio station newsletter promoting its events, disc jockeys, and prizes which includes a response mechanism for listeners to write back to the station, qualifies as a printed sales message. As such, the sale of the newsletter is exempt provided it meets the other requirements of Regulation 1541.5 (b)(1) through (b)(3). 5/31/91.

**432.0085 Real Estate Flyers.** Real estate flyers which contain articles concerning real estate are published monthly. The flyers are sold to customers in quantities of 500 to 10,000 per month, every month. The flyers are shipped by UPS directly to the customers.

Since the flyer does not contain printed sales messages promoting the sales of goods or services and is shipped directly to the customer, the sale is not exempt under Regulation 1541.5(b). 9/24/91.

**432.0090 Reply Envelope/Order Form.** A reply envelope/order form is a single sheet of paper. Approximately 2/3 of the sheet of paper is folded and glued to make a postage paid reply envelope. The remaining 1/3 is the order form. One side of the order form is fully devoted to a printed sales message. The reverse side of the order form contains spaces for affixing stickers to indicate acceptance of one free issue, and to start a subscription to a magazine. The reply envelope is provided for the primary purpose of promoting the sale of magazine subscriptions.

Given that the reply envelope is for the purpose of securing an order, and that the reply envelope is affixed to the printed sales message, taken as a whole, the document is printed for the principal purpose of promoting the sale of the magazines and qualifies as a printed sales message. 5/7/92.

**432.0096 Sales Subject to Use Tax.** Catalogs and flyers are printed to the order of an out-of-state wholesaler of office supplies by an out-of-state printer. By previous agreement, the catalogs and flyers are sold by the wholesaler to its dealers, some of whom are in California. The materials are shipped by common carrier from the printer directly to the dealer or to the dealer's customers. No charge is made to the dealer's customers.

The catalogs and flyers do not qualify for exemption as "printed sales messages" because they were not printed to the special order of the purchasers, the dealers. Those items that were shipped from the out-of-state printer directly to the dealer's customers are not subject to either California sales or use tax. The sale

occurred out of state, and the use consisted of passage of title by gift or donation to the addressee, which use occurred upon deposit of the property with the delivering carrier, which also occurred out of state.

The portion of the materials shipped directly to the dealers in California are subject to use tax, and the wholesaler is required to collect the tax and remit it to the state. 5/17/90.

[432.0099](#) **Schedule of Events.** A publication contains a schedule of various performances and events. Two versions are published, one is for paid subscribers and the other is given away free at music stores. The purchaser was a ticket brokerage firm. The publication also includes advertisements. At issue here is whether or not the schedule of events in the publication constitutes advertising which will result in the advertising portion of the publication to exceed 90 percent of the total printed area.

In this case, the schedules are intended to induce recipients of the publication to purchase tickets from the ticket brokers. Accordingly, the scheduled information is regarded as advertising. The publication, therefore, does not qualify as an exempt periodical.

However, the printed matter in the publication is the type of printed sales messages specified in the statute, section 6379.5. Accordingly, those publications delivered to persons other than the buyer and at no cost to the recipients would qualify for the exemption provided for printed sales messages. 12/23/93.

[432.0100](#) **School Catalogs.** School catalogs which are generally reference materials, i.e. comprehensive listings of class offerings, do not qualify as printed sales messages. For purposes of section 6369.5, “printed sales messages” is limited to those messages which principally advertise or promote the goods or services to which the printed matter relates. Accordingly, those catalogs which generally advertise a school to solicit prospective applicants for a fee do qualify as printed sales messages. To qualify as tax exempt printed sales messages, the mailing requirement of section 6379.5 must be satisfied. 4/21/87; 5/13/87.

[432.0120.500](#) **Seller also Common Carrier.** The taxpayer manufactures and sells printed sales messages. The same taxpayer is licensed as a common carrier. As a common carrier, the taxpayer also contracts to deliver the messages it has sold to customers. The taxpayer separately contracts and invoices for the common carrier services. Title to the messages sold passes to the customer before the commencement of delivery to the recipients. Under section 6379.5, the common carrier must be an entity other than the seller or the purchaser. Thus, the sale of the messages does not comply with the provisions for the exemption when the seller and the common carrier are the same entity regardless of the passage of title to the printed sales messages. 6/14/96.

[432.0121](#) **Shopping Guides.** Shopping guides published periodically, which do not qualify as newspapers or periodicals, are distributed free of charge by the publisher who obtains revenue from the sale of advertising space in the shopping guide. Although these shopping guides are used principally to advertise goods and services, they do not meet the test of “printed sales messages” provided in Regulation 1541.5 (a)(2), because they are not “printed to the special order” of the purchaser. Under these circumstances, the publisher is the consumer of these shopping guides and owes tax with respect to the paper and ink used to produce them. 7/28/89.

[432.0121.001](#) **Shopping Guides.** A publisher/printer produces printed material which qualifies as a printed sales message in that it is printed for the principal purpose of promoting the sale of goods or services. However, in order to qualify for the exemption, the printed matter must be printed to the special order of the purchaser and mailed or delivered by the seller (i.e., the printer) to someone other than the purchaser as specified in section 6379.5. If the publisher of a shopping guide is merely selling advertising space to advertising customers, the transaction does not involve the sale of printed material to the special order of the purchaser since at no time does the publisher transfer title of the shopping guide to the customer/advertiser. As such, the publisher is the consumer of the shopping guide. Therefore, tax applies to the sale of the materials to the publisher/printer. 4/2/96.

[432.0130](#) **Standees.** Freestanding cardboard printed matter (commonly known as “standees”) and hanging mobile cardboard printed matter commonly placed in businesses and printed for the principal purpose of advertising or promoting goods or services qualify as “printed sales messages.” 6/26/96.

[432.0140](#) **Taxpayer as Consignee.** Directories, which qualify as printed sales messages, are printed to the special order of the taxpayer. The sellers ship the directories by common carrier to an address specified by taxpayer. The carrier is an independent contractor. The address specified by taxpayer is usually a parking lot centrally located within the area or neighborhood in which the directories are to be delivered. The bills of lading all show taxpayer as the consignee. Taxpayer hires individuals to deliver the directories to homes and businesses. Taxpayer believes that the individuals deliver the directories as independent contractors and not as his/her employees.

Under the facts described above, the sales of directories do not qualify for exemption. Since the bills of lading show the taxpayer as consignee, the directories are sent to the taxpayer, rather than to “any other person at no cost to that person who becomes the owner thereof”. In accordance with Sales and Use Tax Regulation 1541.5(d)(6), tax applies to sales of printed sales messages which are delivered to the purchaser. The taxpayer’s action of immediately turning the directories over to independent contractors to then deliver to donees does not provide a basis for exemption. 9/19/90.

[432.0160](#) **Telephone Directories.** Telephone directories which consist entirely of yellow pages (classified and display advertising) qualify as “printed sales messages.” Telephone directories that consist entirely of telephone numbers in alphabetical order, or in order by street address, do not qualify as “printed sales messages.” Telephone directories which include a white pages section (alphabetical or street address listing) and a yellow pages section (advertising by goods or services) qualify as “printed sales messages” if more than one-half of the telephone directory consists of yellow pages advertising. 10/27/87.

[432.0161](#) **Telephone Directories.** In a combined telephone directory, consisting of both yellow pages and white pages, a listing printed in bold style type in the white pages does not qualify as advertising. Yellow page listings constitute advertising and white page listings constitute nonadvertising. 5/24/88.

[432.0162](#) **Telephone Directories.** The Fremont and Milpitas, Newark and Berryessa Telephone Directory has both “white” and “yellow” pages bound in the same volume. White pages mean and include those pages which alphabetically list names, addresses and phone numbers in a single line. Yellow pages generally mean those pages which contain blocks of advertising. White pages are not printed sales messages while the yellow pages are printed sales messages. In addition, the directory also features center color ad pages and coupon pages, which are also considered to be printed sales messages.

The principal purpose of the directories is to advertise or promote goods or services. This conclusion is based on the substantial quantity of yellow pages, center color ad pages, and coupon pages which outnumber the white pages. In addition, the recipient of the directory receives it at no charge and becomes the owner thereof. To qualify as tax exempt printed sales messages, the mailing requirement of section 6379.5 must be satisfied. 6/13/88.

[432.0200](#) **The Salt Shaker.** The Salt Shaker is a publication in the form of a newsletter which contains informative articles on state and local tax issues. As this publication does not generally advertise or promote the sale of goods or services, the publication does not qualify as a “printed sales message.” 5/6/93.

[432.0201](#) **Information Flyer.** A flyer providing information on a five-day seminar which is free to selected participants, except for travel to and from the institute, is not a printed sales message since it does not promote goods or services for sale. 4/11/97.

[432.0300](#) **Unmailed Printed Sales Messages.** The taxpayer, a print broker, contracts with a printer for printing material that qualifies as “printed sales messages” and sells that printed material to its client. The printed sales messages are delivered by the printer to a mailing house. The mail house merges the printed sales messages and the client’s company’s billing into an envelope and delivers them to the U.S. Post

Office for mailing. Since the exact number of billing statements to be mailed are not known when the printing order is placed, the taxpayer orders an extra number of printed sales messages to be certain that a sufficient number are available. For example, 165,000 are ordered and 160,000 are mailed leaving 5,000 left over. The 5,000 are destroyed since they are date sensitive and not to be used again.

In this situation, the taxpayer, a print broker, contracts with a printer for the printed material and then sells that printed material to its customer. The taxpayer purchases the printed material for resale. In which case, sales tax will not apply to the sale of the printed material to the taxpayer. The taxpayer's sale of the printed material to its customer is a retail sale subject to sales tax unless the sale is exempt. Since the printed matter is a printed sales message, the exemption for the sale of printed sales messages applies.

In addition, the taxpayer would not incur tax liability for material which was purchased for resale but has become unsalable and is discarded. (Annotation 280.0660 (11/28/66).)

Accordingly, under these specific facts, the sale of the printed materials is exempt from tax including that printed material which was not used (destroyed). 3/8/96.

**432.0500 You Can Win \$5,000.00 For Your School!** The publication "You Can Win \$5,000.00 For Your School" does not contain a printed sales message promoting the sale of goods or services. Accordingly, this publication does not qualify as a "printed sales message." 6/11/93.

**432.0600 "Physician's Handbook."** This handbook advertises services to community physicians for the purpose of attracting patient referrals. The table of contents of the handbook lists the university's various departments. The sections of the handbook describe the departments and list physicians and telephone numbers. There is also an alphabetical index of physicians. This handbook appears to be a directory that is a reference guide of the services and physicians and is not a printed sales message within the meaning of Regulation 1541.5. 11/19/92.

**432.0607 Posters Placed on Walls.** A taxpayer prints sales messages in the form of posters for its customers. The taxpayer sends the posters by common carrier or U.S. mail to independent contractors for distribution. The independent contractors are hired by the taxpayer. The contractors place the posters on the walls of boarded-up buildings or temporary walls surrounding construction sites. Neither the taxpayer nor the contractors request permission from the owners of the walls to place the posters. The posters remain in place until the property owner or someone else removes them.

The property owners acquire dominion and control over the posters and thus become owners of the posters. The sale of the posters is therefore exempt. 11/15/93.

**432.0610 Prospectuses.** Prospectuses are printed sales messages as defined under Regulation 1541.5(a)(1). 7/27/88.

**432.0750 Soliciting Donations.** Circulars soliciting donations for a charitable organization are not printed sales messages even though the donations will be used by the organization to purchase goods and services that will be provided to those in need.

Solicitations can only be construed as a "printed sales message" if they meet the principal purpose of advertising or promoting goods or services. Solicitations requesting donations do not meet this criteria. Therefore, the circulars are subject to the tax. 4/15/94.

**432.0760 Special Order of the Purchaser.** An out-of-state wholesaler contracts with out-of-state printers for catalogs and fliers advertising its products. These advertising materials are imprinted with dealers' names. Dealers are not agents of the wholesaler, but are independent retailers. The catalogs and fliers are shipped by the printer to California dealers and to the dealers' customers. The wholesaler charges the dealers for the advertising materials. The dealers make no charge to their customers for the materials.

The regulation on printed sales messages requires that advertising materials be “printed to the special order of the purchaser.” The advertising materials described here are designed and printed to the request of the wholesaler. Accordingly, the sales to the dealers do not meet the requirements for exemption under the regulation. However, on shipments direct to the customer, the use takes place out of state when the printed matter is deposited in the mail. In these instances use tax does not apply. 5/17/90.

[432.1100](#) **Use of Mailing House.** Pursuant to Revenue and Taxation code section 6379.5 and Regulation 1541.5, there is no restriction requiring the parties to use a mailing house that acts solely as the purchaser’s agent and not one that acts as the seller’s agent.

If the mailing house acts as an agent of the seller, the printed sales messages would be “mailed or delivered by the seller” and, thus, meet the delivery requirement of the statute. It is believed that the language was added to allow the seller to deliver the printed sales messages to a mailing house hired by the purchaser without losing the exemption. 12/16/91.

[432.1700](#) **Telephone Directory Bold Listings.** Bold listings and other business listings in the white pages of a telephone directory are not regarded as advertisements. Coupon sections do qualify as advertising. In calculating whether a directory contains more than 50 percent advertising, only the yellow pages and coupon sections are considered as advertising. 11/5/93.